

REMARKS

Reconsideration of this application as amended is respectfully requested.

In the Office Action, claims 1-21 and 23-33 were pending. In this response, claims 20-21 and 23-33 have been canceled without prejudice. Claims 1, 10-12, and 17-18 have been amended. In addition, new claims 34-36 have been added. Thus, claims 1-19 and 34-36 remain pending. No new matter has been added. Applicants reserve all rights with respect to the application of the doctrine of equivalents.

Claim 18 is objected to because of the informalities. In view of the foregoing amendments, it is respectfully submitted that the objection has been overcome.

Claims 1, 10, 13-22, 31 and 32 are rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. Claim 32 is rejected under 35 U.S.C. §112, second paragraph. In view of the foregoing amendments, it is respectfully submitted that the rejections have been overcome.

Claims 1-17, 19, 20-21, 23-31, and 33 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,794,207 of Walker et al. ("the Walker '207 patent") in view of U.S. Patent No. 6,415,270 of Rackson et al. ("Rackson") and U.S. Patent No. 6,108,639 of Walker et al. ("the Walker '639 patent").

In view of the foregoing amendments, it is respectfully submitted that the pending claims 1-19 and 34-36 as amended include limitations that are not disclosed by the cited references, individually or in combination. Specifically, independent claim 1 as amended recites as follows:

1. A computer implemented method of performing electronic commerce, said computer implemented method comprising:
listing a set of available products to a set of consumers via a Web page of a Web server for online auction;

accepting a request for a specific product from a particular consumer via the Web page over a network;
 accepting a reserve price for said specific product from said particular consumer, said reserve price comprising a price acceptable to said particular consumer;
 distributing said request for said specific product and said reserve price to a set of sellers over the network;
 accepting at most one offer from each said seller in said set of sellers, each said offer comprising an offer price specifying a price at which an associated seller will sell said specific product, said accepting occurring for a predetermined time period or until an offer having an offer price less than or equal to said reserve price is received;
 if there is only one offer having an offer price less than or equal to the reserve price, consummating, without intervention from the consumer, a transaction with said offer having an offer price less than or equal to said reserve price if said offer having an offer price less than or equal to the reserve price is received;
if there are multiple offers having an offer price less than or equal to the reserve price, presenting to the consumer the multiple offers sorted in a predetermined order to allow the consumer to select one offer from the multiple offers;
consummating a transaction with an offer selected by the consumer if the consumer selects from the multiple offers; and
consummating a transaction with an offer having a lowest price from the multiple offers if the consumer does not select from the multiple offers.

(Emphasis added)

Independent claim 1 includes limitations that during the auction, if there are multiple offers having an offer price less than or equal to the reserve price, presenting to the consumer the multiple offers sorted in a predetermined order to allow the consumer to select one offer from the multiple offers. If the consumer selects one offer from the multiple offers, consummating a transaction with an offer selected by the consumer. If the consumer does not select from the multiple offers, consummating a transaction with an offer having a lowest price from the multiple offers. It is respectfully submitted that the above limitations are absent from the cited references, individually or in combination.

In contrast, the cited references always select the offer having the lowest price if there are multiple offers that are below or equal to the prices in the CPO, in which the purchaser has to discretion on selecting one from the multiple offers if the multiple offers exist. That is, if

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there are multiple offers that satisfy the price set in the CPO, the system assumes that the purchaser would select the offer having, for example, the lowest price without prompting the purchaser to select in such an situation (see, col. 11, lines 13 to 32 of the Walker '639 patent). Therefore, it is respectfully submitted that claim 1 is patentable over the cited references.

It is respectfully submitted that there is no disclosure or suggestion within these cited references to combine with each other. It would be impermissible hindsight based on applicants' own disclosure to make such a combination. Even if they were combined, such a combination still lacks the limitations set forth above. Therefore, it is respectfully submitted that independent claim 1 is patentable over the cited references.

Similarly, independent claim 35 and 36 include limitations similar to those recited in claim 1. Thus, for the reasons similar to those discussed above, it is respectfully submitted that claims 35-36 are patentable over the cited references.

Given that the rest of the claims depend from one of the above independent claims, for at least the reasons similar to those set forth above, it is respectfully submitted that the rest of the claims are patentable over the cited references.

Claim 18 is rejected 35 U.S.C. §103(a) as being obvious over the Walker '207 patent in view of Rackson and further in view of Official Notice. Claim 32 is rejected 35 U.S.C. §103(a) as being obvious over the Walker '207 patent in view of Rackson, the Walker '639 patent, U.S. Patent No. 6,230,147 of Alaia et al. ("Alaia"), and further in view of Official Notice.

Claim 18 depends from claim 1. Thus, for at least the reasons similar to those with respect to claim 1, it is respectfully submitted that claim 18 is patentable over the cited references. Claim 32 has been canceled without prejudice.

The Examiner stated that applicants did not traverse the alleged Official Notice (see, page 3 of 12/1/2004 Office Action) and thus constitutes an admitted prior art. Applicants
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respectfully disagree. Claims 18 and 32 are dependent claims dependent from claims 1 and 20. The alleged Official Notice was not addressed to the independent claims 1 and 20. Applicants provided arguments and amended independent claims 1 and 20 in the previous response that applicants believe were patentable over the cited references. As a result, there is no need to address the alleged Official Notice.

Nevertheless, it is respectfully submitted that although it is well known that one would accept an offer having the lowest price, it is not well known or obvious to one with ordinary skill in the art to implement an online auction as recited in the claims.

Conclusion


In view of the foregoing, applicants respectfully submit the present application is now in condition for allowance. If the Examiner believes a telephone conference would expedite or assist in the allowance of the present application, the Examiner is invited to call the undersigned attorney at (408) 720-8300.

Please charge Deposit Account No. 02-2666 for any shortage of fees in connection with this response.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

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Kevin G. Shao
Attorney for Applicant
Reg. No. 45,095

12400 Wilshire Boulevard
Seventh Floor
Los Angeles, CA 90025-1026
(408) 720-8300